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**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEVADA**

JB VIVA VEGAS, L.P.,	)	
	)	
	)	
Plaintiff,	)	Case No. 2:16-cv-01130
	)	
v.	)	
	)	
NEVADA RESORT ASSOCIATION-	)	
IATSE LOCAL 720 RETIREMENT	)	
PLAN,	)	

**PLAINTIFFS' MEMORANDUM OF LAW IN  
 OPPOSITION TO DEFENDANT'S MOTION TO DISMISS  
COMPLAINT FOR LACK OF JURISDICTION**

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1 **INTRODUCTION**

2 This Court should deny Defendant's Motion to Dismiss. JB Viva Vegas, L.P.,  
3 ("JB" or "Plaintiff") has pled sufficient facts to state a valid claim for relief under  
4 ERISA § 4301(a), 29 U.S.C. § 1451(a), which entitles JB to declaratory relief under 28  
5 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Defendant's tortured  
6 interpretation of ERISA's arbitration provision effectively reads ERISA § 4301(a) out  
7 of the statute. Accordingly, Defendant, Nevada Resort Association-IATSE Local 720  
8 Retirement Plan (the "Plan" or "Defendant"), is not entitled to a dismissal of JB's  
9 Complaint under Federal Rule of Civil Procedure 12(b)(6).

11 **PRELIMINARY STATEMENT**

12 Defendant wrongly moves for this Court to dismiss Plaintiff's Complaint  
13 because the Plan incorrectly claims that Plaintiff first must initiate arbitration under  
14 ERISA's mandatory arbitration provision. *See* 29 U.S.C. § 1401(a). What the  
15 Defendant conveniently fails to tell this Court is that Plaintiff cannot initiate ERISA  
16 arbitration, because the triggering event for Plaintiff to do so has not even occurred.  
17 Defendant has not assessed withdrawal liability against Plaintiff, because Plaintiff has  
18 not withdrawn from the Plan. *See Id.* Plaintiff is not challenging a withdrawal liability  
19 determination at all. Therefore, the mandatory arbitration provision of ERISA does not  
20 apply. Defendant cites a series of cases holding that an employer challenging a  
21 withdrawal liability determination must first arbitrate any dispute concerning the  
22 determination, which is all well and good but for the fact that Plaintiff is not  
23 challenging a withdrawal liability determination.

26 Instead, Plaintiff alleges that Defendant violated the Employee Retirement  
27 Income Security Act of 1974, as amended, ("ERISA"), 29 U.S.C. § 1001, et al., by  
28 adopting an impermissible amendment to the Trust Agreement (restated as of January 1,

2003, and as amended thereafter) (the “Trust Agreement”) (relevant section attached as Exhibit A (DE 9-1) to Defendant’s Motion to Dismiss (DE 8)) governing the Plan. Compl. ¶ 13. Defendant’s offending amendment effectively eliminates the “entertainment industry” withdrawal liability rule established by ERISA § 4203(c), 29 U.S.C. § 1383(c) (the “Entertainment Rule”) for all employers contributing to the Plan. ERISA permits multiemployer pension plans to exclude a “group” or “class” of employers from the application of the “Entertainment Rule,” but does not permit a plan to limit the application of the rule based on any criteria other than “group” or “class” or to eliminate the rule altogether. 29 U.S.C. § 1383(c)(4).

Contrary to Defendant’s claim, ERISA § 4301(a), 29 U.S.C. § 1451(a), expressly provides a cause of action, not subject to mandatory arbitration, for an “employer . . . , who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan . . . [emphasis added].”<sup>1</sup> *Id.* An employer adversely affected by an act or omission “may bring an action for appropriate legal or equitable relief, or both.” *Id.* The district courts of the United States have exclusive jurisdiction of an action brought under ERISA § 4301(a). 29 U.S.C. § 1451(c). And an employer may bring such action in the district where the plan is administered. 29 U.S.C. § 1451(d). The Fund is administered in Las Vegas, Nevada. Compl. ¶ 2.

Defendant’s Board of Trustees, the Plan’s sponsor under ERISA § 3(16)(B), 29 U.S.C. § 1002(3), (16)(B), adopted an amendment to the Trust Agreement that created liability for Plaintiff and other contributing employers if they withdraw from the Plan and stop performing covered work in the jurisdiction of the Plan; but for this amendment no such liability exists. Compl. ¶ 15. This amendment to the Trust

1 Agreement, therefore, is the epitome of an act relating to employer withdrawals that  
2 adversely affects employers.

3 Defendant incorrectly claims that ERISA requires arbitration of Plaintiff's suit,  
4 because Plaintiff's challenge to Defendant's amendment to the Trust Agreement is  
5 premised on ERISA § 4203(c). However, ERISA § 4221, 29 U.S.C. § 1401, only  
6 requires arbitration of a dispute over a *determination* made under ERISA §§ 4201-4219.  
7 Defendant has not made any determination in this case. And Plaintiff is not challenging  
8 a determination, but rather Plaintiff is seeking a declaratory judgment as to whether the  
9 amendment to the Trust Agreement is valid and enforceable. Plaintiff is adversely  
10 affected by this amendment and needs a determination as to its validity before making  
11 any future decision about withdrawing from the Plan.  
12

13 As further evidence that arbitration is not required, the arbitration requirement  
14 under ERISA is not even triggered until after a multiemployer pension plan assesses  
15 withdrawal liability against an employer. 29 U.S.C. § 1401(a)(1). Therefore, currently  
16 Plaintiff cannot even initiate arbitration under ERISA's arbitration provision.  
17 Additionally, there is no language in ERISA § 4301(a) requiring an employer to  
18 arbitrate before an action under that section can be brought in the district courts. *See* 29  
19 U.S.C. § 1451. So, given that Plaintiff cannot yet initiate arbitration, because there has  
20 been no withdrawal liability assessment or even a withdrawal, and given that ERISA §  
21 4301(a) does not require arbitration before an action can be brought under this section,  
22 it only makes sense that Plaintiff's Complaint should proceed.  
23

24 Conversely, under Defendant's logic, before an employer can challenge any  
25 action by the plan sponsor of a multiemployer pension plan that adversely affects the  
26  
27

28 <sup>1</sup> The referenced subtitle is Subtitle E of Title IV of ERISA, "Special Provisions for Multiemployer Plans." There can be no legitimate dispute that a multiemployer plan is included in "any party under this

1 employer, the employer must sit idly by until it withdraws from the fund, and then the  
 2 employer must wait months or years until it receives a withdrawal liability assessment,  
 3 before it can challenge the fund's actions as unlawful. But by this time, it is too late.  
 4 An employer must be able to determine before it withdraws whether a plan  
 5 amendment—that so obviously contradicts the language of ERISA—is valid. If so, an  
 6 employer may make a different business decision respecting withdrawal. Given the  
 7 growing magnitude of withdrawal liability in many multiemployer plans, it is vital that  
 8 employers have answers before deciding whether to terminate their contribution  
 9 obligation.  
 10

11 This Court should deny Defendants' motion to dismiss because ERISA (i)  
 12 expressly authorizes the relief JB seeks in the Complaint; (ii) prohibits Defendant's  
 13 elimination of the Entertainment Rule and (iii) does not require that this dispute be  
 14 arbitrated, or even provide a mechanism for this dispute to be arbitrated.  
 15

## 16 BACKGROUND

17 JB currently makes monthly pension contributions to the Fund, by virtue of its  
 18 collective bargaining agreement with IATSE Local 720<sup>2</sup>, for work performed in the  
 19 entertainment industry—stagehands work on JB's theatrical production of the musical  
 20 "Jersey Boys" at Paris Hotel & Casino in Las Vegas, Nevada. Compl. ¶ 8. Defendant  
 21 is a multiemployer pension plan primarily covering employees in the theater, motion  
 22 picture, radio, television, sound or visual recording, music and dance industries.  
 23 Compl. ¶ 9. If Defendant's amendment is valid, JB faces withdrawal liability if it  
 24 chooses to close the "Jersey Boys." See 29 U.S.C. § 1383.<sup>3</sup> Therefore, whether the  
 25  
 26

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27 subtitle."

28 <sup>2</sup> Plaintiff's collective bargaining agreement with IATSE Local 720 is expiring, and subject to renegotiation, in November 2016.

<sup>3</sup> Based on Plaintiff's most recent withdrawal liability estimate, Plaintiff would incur withdrawal liability in excess of \$250,000 if it stopped contributing to Defendant and Defendant's amendment was valid.



1 amendment is legal affects Plaintiff's decisions regarding "Jersey Boys" and Plaintiff's  
2 other productions that may be mounted in Las Vegas, because whether Plaintiff would  
3 owe withdrawal liability is dependent on all of its productions in the Plan's jurisdiction.  
4 *See* 29 U.S.C. § 1383.

5  
6 **A. Withdrawal Liability**

7 Under ERISA Section 4201, 29 U.S.C. § 1381, if an employer either partially or  
8 completely withdraws from an underfunded multiemployer pension plan to which that  
9 employer has been making contributions, the employer is liable to the plan for its pro  
10 rata share of the plan's underfunding (commonly referred to as "withdrawal liability").  
11 An employer's withdrawal liability is calculated pursuant to a formula established by  
12 ERISA based on the employer's share of the plan's unfunded vested benefits and,  
13 unfortunately, is often a very large number. *See* 29 U.S.C. § 1391. For purposes of  
14 ERISA, an employer is considered to have "withdrawn" from a plan when the employer  
15 ceases to have an obligation to contribute to the plan because, for example, the  
16 employer shut down operations or finished a project, even if that project was always  
17 understood to be temporary, as is often the case in the entertainment industry. *See* 29  
18 U.S.C. § 1383(a).

19  
20 **B. Administrative Review and Arbitration Requirement**

21 If an employer withdraws from a multiemployer pension plan, is assessed  
22 withdrawal liability, and disagrees with any part of the assessment, before the employer  
23 can challenge the assessment, the employer must request that the plan sponsor of the  
24 multiemployer pension plan review the assessment. 29 U.S.C. § 1399(b)(2)(A). In its  
25 request, an employer may ask the plan sponsor to review any specific matter relating to  
26 the determination of the employer's liability or payment schedule, including any  
27 inaccuracy in the amount of unfunded vested benefits allocated to the employer. *Id.*  
28

1 Under ERISA's arbitration provision, either party may initiate arbitration: (1)  
2 within 60 days after the multiemployer pension plan's sponsor responds to an  
3 employer's request for review of its withdrawal liability assessment; or (2) if the plan  
4 sponsor fails to respond to the request for review, 120 days after an employer's request  
5 for review of its withdrawal liability assessment. 29 U.S.C. §1401(a). Alternatively,  
6 the employer and plan sponsor may jointly initiate arbitration within 180 days after the  
7 plan sponsor's assessment of withdrawal liability against the employer. *Id.* But there  
8 is no provision in ERISA requiring arbitration when there has been neither (1) a  
9 withdrawal liability assessment; or (2) an employer withdrawal. And an employer is  
10 not even permitted to arbitrate a dispute until after it has requested review of the plan  
11 sponsor's withdrawal liability determination. *Id.*

### 14 C. Entertainment Industry Exception to Withdrawal Liability

15 Recognizing that imposing withdrawal liability on employers in the  
16 entertainment industry each time an employer finishes a project (e.g., closes a  
17 production which has run its profitable life span) would result in a massive and unfair  
18 economic penalty that could potentially cripple the entire entertainment industry,  
19 Congress carved out an exception, commonly known as the "Entertainment Rule." See  
20 ERISA Section 4203(c)(1), 29 U.S.C. § 1383(c)(1). The Entertainment Rule is an  
21 exception to the general withdrawal liability rule for employers, like the Plaintiff-  
22 employer, that contributes to a multiemployer pension plan for work performed in the  
23 entertainment industry. *Id.*

25 Under the Entertainment Rule, an employer performing work in the  
26 entertainment industry on a temporary or project basis who then stops performing such  
27 work is not withdrawn from a multiemployer pension plan so long as the employer  
28 performs no work in the jurisdiction of the plan that previously required contributions.

1 *Id.* An employer must avoid performing such work for a full five plan years after the  
 2 employer's last contribution. *Id.* If the employer does perform work during that five-  
 3 year period in the jurisdiction of the plan that previously required contributions and  
 4 does not contribute to the plan, then such employer will be deemed to have withdrawn  
 5 as of the date of the employer's last contribution. *Id.*

6  
 7 ERISA does, however, permit multiemployer pension plans subject to the  
 8 Entertainment Rule ("Entertainment Plan") to exclude a "group or class of employers"  
 9 from the application of the Entertainment Rule. 29 U.S.C. § 1383(c)(4). But there is  
 10 not a provision in ERISA that permits an Entertainment Plan to exclude all of its  
 11 contributing employers from the application of the Entertainment Rule or to limit the  
 12 application of the Entertainment Rule based on criteria other than "group or class." *Id.*

13  
 14 **D. Fund's Amendment to the Trust Agreement to Eliminate the  
 15 Entertainment Rule**

16 Defendant amended its Trust Agreement to eliminate the application of the  
 17 Entertainment Rule for all employers who contributed to the Plan for more than 12  
 18 months and for the top ten contributing employers to the Plan during any of the five  
 19 years preceding the relevant employer's withdrawal. Compl. ¶ 13.<sup>4</sup> This exclusionary  
 20 language is not based on a "group or class" of employer but rather on the amount or  
 21 duration of an employer's contributions. 29 U.S.C. § 1383(c)(4); *see* DE 9-1.  
 22 Moreover, as a practical matter, this rule eliminates the Entertainment Rule for all  
 23 employers. Once an employer contributes to the Plan and twelve months pass, if the  
 24

25  
 26 <sup>4</sup> JB has no knowledge why the Plan's sponsor adopted this clearly unlawful amendment to the Trust  
 27 Agreement. The Plan's sponsor also amended the Trust Agreement (Section 4.4(c)) to add another—  
 28 equally if not an even more egregiously unlawful—provision that would require an employer challenging  
 in good faith the Plan's withdrawal liability assessment to pay the Plan's attorney's fees and costs in  
 direct violation of 29 C.F.R. § 4221.10(c). *See* DE 9-1. Under ERISA § 4221(a)(2), 29 U.S.C. §  
 1401(a)(2), Congress delegated to PBGC the authority to promulgate rules governing the withdrawal  
 liability dispute process, and PBGC determined that attorney's fees may only be granted if a party  
 engages in bad faith during the arbitration. 29 C.F.R. § 4221.10(c). This amendment to the Trust

1 employer ever contributes to the Plan again it loses the benefit of the Entertainment  
2 Rule, and would be assessed withdrawal liability once the then current project requiring  
3 contributions ends.

#### 4 **E. Plaintiff's Action**

5 Plaintiff filed this action under ERISA § 4301(a), 29 U.S.C. § 1451(a), because  
6 the amendment to the Trust Agreement is an act that adversely affects Plaintiff and that  
7 concerns employer withdrawals. Plaintiff, however, is not challenging Defendant's  
8 determination of withdrawal liability, because Plaintiff has not withdrawn and  
9 Defendant has not assessed withdrawal liability.

#### 11 **LEGAL STANDARD**

12 A court may dismiss a complaint under Federal Rule of Civil Procedure  
13 12(b)(6) for failure to state a cause of action only if the plaintiff has failed to plead  
14 sufficient facts to plausibly suggest that the plaintiff is entitled to relief. *Starr v. Baca*,  
15 652 F.3d 1202, 1216 (9th Cir. 2011). In determining whether a plaintiff has pled  
16 sufficient facts to support a plausible claim for relief, the court assumes that the facts  
17 pled in the complaint are true and construes them in the light most favorable to the  
18 plaintiff. *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012).

#### 20 **ARGUMENT**

#### 21 **I. ERISA Provides a Cause of Action Not Subject to Arbitration for Plaintiff** 22 **to Challenge the Trust Agreement's Amendment to the Entertainment Rule.**

23 Section 4301(a) of ERISA, 29 U.S.C. § 1451(a), authorizes an employer to  
24 bring an action against a plan or plan sponsor if it is adversely affected by an act or  
25 omission by the plan sponsor that relates to employer withdrawals. *See Bay Area*  
26 *Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp.*, 522 U.S. 192, 203  
27

(1997) (holding section 1451(a) determines which parties have standing to bring an action under this section). Here, Plaintiff challenges the amendment to Defendant's Trust Agreement eliminating the Entertainment Rule, a rule affecting employer withdrawals. Accordingly, JB's challenge to the legality of the amendment that effectively eliminates the Entertainment Rule and adversely affects the Plaintiff is a cause of action authorized by ERISA § 4301(a).

Plaintiff's suit is similar to claims brought in other circuits where the courts have recognized an employer's authority under ERISA § 4301(a), 29 U.S.C. § 1451(a), to challenge a plan's actions. For example, in *Borntrager v. Central States, Southeast & Southwest Areas Pension Fund*, the Eighth Circuit held that an employer has the right to bring a declaratory judgment action under 28 U.S.C. § 2201 and ERISA § 4301(a), 29 U.S.C. § 1451(a), to challenge a multiemployer pension plan's expulsion of such employer from the plan. 425 F.3d 1087, 1089-90, 1092-93 (8th Cir. 2005). Similarly, in *Peick v. Pension Benefit Guaranty Corp.*, the Seventh Circuit held that an employer had the right to challenge the constitutionality of ERISA's withdrawal liability provisions because the employer was adversely affected by the imposition of withdrawal liability. 724 F.2d 1247, 1258-59 (7<sup>th</sup> Cir. 1983).

Neither the *Borntrager* case nor the *Peick* case was arbitrated before they were litigated in the federal courts, nor should this case. Because Plaintiff's suit is not a challenge to a withdrawal liability determination, the arbitration requirement simply is inapplicable.

## **II. Plaintiffs Claim is not Subject to Mandatory Arbitration.**

ERISA *only* requires arbitration of disputes "concerning a *determination* made under" 29 U.S.C. §§ 1381-1399 [emphasis added]. 29 U.S.C. § 1401(a)(1). Even

1 though Plaintiff's challenge is based on Defendant's violation of ERISA § 4203(c)(1),  
2 29 U.S.C. § 1383(c)(1) , Plaintiff is not challenging a determination by Defendant  
3 under the enumerated provisions. In fact, Plaintiff's challenge does not contest any  
4 determination at all. Rather, Plaintiff only challenges the lawfulness of an amendment  
5 to Plan's Trust Agreement.  
6

7 Both the Second and Third Circuits have found that disputes between employers  
8 and plan sponsors that do not involve the resolution of facts necessary to calculate  
9 withdrawal liability, are not subject to mandatory arbitration. In *T.I.M.E.-DC, Inc. v.*  
10 *Management-Labor Welfare & Pension Funds, of Local 1730 International*  
11 *Longshoreman's Ass'n*, 756 F.2d 939, 945 (2d Cir. 1985), the Second Circuit held that  
12 the issue of the fund's compliance with ERISA's transfer of assets rule, a condition  
13 precedent to the fund's assessment of withdrawal liability against the employer, was not  
14 subject to mandatory arbitration. Similarly, the Third Circuit, in *Carl Colteryahn*  
15 *Dairy, Inc. v. Western Pennsylvania Teamsters & Employers Pension Fund*, 847 F.2d  
16 113, 118-19 (3d Cir. 1988), refused to require an employer challenging the fund's  
17 assessment of withdrawal liability to arbitrate because the employer's challenge was  
18 that it was fraudulently induced by the union to contribute to the plan, a challenge that  
19 did not involve the fund's calculation of withdrawal liability.  
20  
21

22 If JB were simply challenging Defendant's calculation of withdrawal liability,  
23 JB would be required to exhaust administrative remedies and then, if necessary, initiate  
24 arbitration. But JB's declaratory judgment suit does not challenge a determination,  
25 instead JB only challenges whether the legal authority exists to eliminate ERISA's  
26 Entertainment Rule. This case is far more clean-cut than either *T.I.M.E.-DC* or  
27 *Colteryahn*, because there is not even a withdrawal liability determination, or any other  
28 Defendant determination, that is in dispute. As explained above, Plaintiff could not

1 even initiate arbitration under ERISA's mandatory arbitration provisions if it wanted to  
2 do so, because it has not been assessed withdrawal liability and has not even withdrawn  
3 from the Plan.

4 In the Defendant's Motion to Dismiss, it cites multiple circuit court opinions  
5 where the court concluded that disputes relating to withdrawal liability determinations  
6 were subject to mandatory arbitration. But in each and every case, the multiemployer  
7 pension plan involved had already assessed withdrawal liability, and the dispute before  
8 the respective courts involved a challenge to the employer's withdrawal liability  
9 assessment. *See Heavenly Hana LLC v. Hotel Union & Hotel Indus. of Haw. Pension*  
10 *Plan*, No. 14-cv-03743-JCS, 2016 U.S. Dist. LEXIS 16466, at \*20 (N.D. Cal. Feb. 10,  
11 2016) (Court did not require arbitration in this case because dispute did not involve a  
12 withdrawal liability determination but rather a successor liability claim); *see also*  
13 *Teamsters Pension Trust Fund-Bd. of Trs. of W. Conference v. Allyn Transp. Co.*, 832  
14 F.2d 502, 504-06 (9th Cir. 1987)(Employer waived right to challenge withdrawal  
15 liability assessment because after it received a withdrawal liability assessment it  
16 requested review of the assessment but then failed to initiate arbitration) *Findlay Truck*  
17 *Line, Inc. v. Cent. States, Se. & Sw. Areas Pension Fund*, 726 F.3d 738, 740, 755-56  
18 (6th Cir. 2013) (Employer challenging a withdrawal liability assessment that it had  
19 received, based on the labor dispute exception, was required to arbitrate its dispute);  
20 *Bd. of Trustees of Constr. Laborers' Pension Trust for S. Cal. v. M.M. Sundt Constr. Co.*,  
21 37 F.3d 1419, 1420-21 (9th Cir. 1994) (per curiam) (arbitration was required because  
22 the dispute involved the determination of withdrawal liability). Plaintiff does not  
23 dispute that challenges to a withdrawal liability determination must be arbitrated. But  
24 the Plan fails to cite to any case where a court found that ERISA's mandatory  
25  
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1 arbitration provision applies even to ERISA disputes not involving a withdrawal  
2 liability determination. This omission is likely, because no such case exists.

3       Lastly, Defendant spends considerable time arguing Plaintiff's claim does not  
4 fall into any of the exceptions to ERISA's mandatory arbitration provisions that have  
5 been recognized by several circuits. But this argument misses the point, and Plaintiff  
6 need not establish that its suit falls into any of these exceptions. This analysis simply is  
7 unnecessary, because an exception to the mandatory arbitration provision would only  
8 be relevant if the mandatory arbitration provision would apply but for the exception.  
9 But the mandatory arbitration provision cannot apply in this case, because there has not  
10 been a withdrawal or a withdrawal liability determination.

11       It is only common sense that in order for Plaintiff's suit to be subject to  
12 mandatory arbitration that it must be possible for Plaintiff to initiate arbitration (unless  
13 Plaintiff had missed the statutory deadlines, which is not the case here). The Plan,  
14 however, fails to explain how Plaintiff can initiate arbitration over this dispute when  
15 ERISA § 4221(a), 29 U.S.C. § 1401(a), does not permit either party to initiate  
16 arbitration, either individually or jointly, until after the plan has assessed withdrawal  
17 liability. The reason that the Plan does not explain this conundrum is because  
18 Defendant knows that it is not possible for Plaintiff to initiate arbitration at this time.  
19 So what Defendant really is arguing is that employers, like Plaintiff, do not have the  
20 ability to challenge any action by plan sponsors of multiemployer pension plans that  
21 may cost employers millions of dollars in withdrawal liability, at least not until after the  
22 employer has withdrawn and incurred the liability.

23       But nowhere in ERISA § 4301, 29 U.S.C. § 1451, is there any language  
24 requiring an employer to wait until after it withdraws to bring an action under this  
25 section. In fact, after an employer withdraws and has gone through the arbitration



process, ERISA § 4301 is unnecessary. An employer may bring a suit to challenge an arbitrator's award under ERISA § 4221(b)(2), 29 U.S.C. § 1401(b)(2). Therefore, unless employers can bring suits in federal court before there is a withdrawal liability assessment, and before mandatory arbitration is triggered, authorization of employer suits relating to employer withdrawals under ERISA § 4301 would be meaningless. In other words, Defendant's logic reads section 4301 out of ERISA—a ridiculous result. JB's suit, therefore, is authorized under § 4301 and is not subject to mandatory arbitration, as the Defendant has not assessed withdrawal liability and JB has not withdrawn.

# **CONCLUSION**

WHEREFORE, for the reasons stated above, this Court should deny Defendants' Motion to Dismiss under both Fed. R. Civ. P. 12(b)(6) because JB has stated a valid cause of action upon which relief can be granted.

Dated: June 30, 2016

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC SERVICE**

This is to certify that on the 30<sup>th</sup> day of June, 2016, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT FOR LACK OF JURISDICTION with the U.S. District Court, and a copy was electronically transmitted from the court to the e-mail address on file for:

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By: /s/ Lorraine James-Newman

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